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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/674,996

11/02/2000

William Edward James

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83702

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08/27/2009

William E. James

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EXAMINER

NGUYEN, TAM M

ART UNIT

PAPER NUMBER

3764

MAIL DATE

DELIVERY MODE

08/27/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/674,996	<b>Applicant(s)</b> JAMES, WILLIAM EDWARD	
	<b>Examiner</b> TAM NGUYEN	<b>Art Unit</b> 3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 06 April 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 22,23,26,27,36,37,39 and 41 is/are pending in the application.
- 4a) Of the above claim(s) 39 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 22,23,26,27,36,37 and 41 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. In view of the Appeal Brief filed on April 6, 2009, PROSECUTION IS HEREBY REOPENED. A new ground of rejection is set forth below.

2. To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

### ***Election/Restrictions***

3. Claim 39 was withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species having an external energy source, there being no allowable generic or linking claim. It appears that claim 41 had been inadvertently withdrawn from the application. The claim has been rejoined and fully examined for patentability.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 22, 23, 27, 37 and 41 are rejected under 35 U.S.C. 102(b) as being anticipated by Gordon (5,342,264).

4. As to claim 22, Gordon discloses a reciprocating foot pedal exerciser for stepping, walking, jogging and running in place, enabling automatically variable length strides, comprising foot pedals (24) for receiving user foot action at a substantially constant forward step-down position on the exerciser, support means for guiding (22) said foot pedals in primarily back and forth strokes variable rearward from forward step-down position and means for returning (94) said foot pedals to said forward step-down position at the end of each stride independently of stride length (see Figs. 1, 4, 7, 9 & 10 and ABSTRACT, Col. 5, lines 19-20 & 56-62, Col. 6, lines 55-57 & Col. 6, line 60 - Col. 7, line 7).

5. As to claim 23, Gordon further discloses the means for returning (94) returns the rearmost one of said foot pedals to said forward step-down position using step-down energy (see Fig. 9 and Col. 5, lines 19-20 & 50-66).

6. As to claim 27, Gordon further discloses the means for returning (94) comprises spring means (106) (see Fig. 9 and Col. 5, lines 50-55).

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7. As to claim 37, Gordon further discloses the means for returning (94) employs stride energy (see Fig. 1 and Col. 5, lines 56-66).

8. As to claim 41, Gordon discloses an exercise as substantially claimed. In particular, Gordon discloses that the means for returning the foot pedals to the forward step down position at the end of each stride is returned at a velocity substantially greater than stride velocity. Since a bungee cord is being stretched when the pedal is moved backward with a user's foot thereon at a given velocity, it is inherent that when the user's foot is lifted off the pedal, the bungee would return the pedal to the forward step down position at a greater velocity.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gordon '264 in view of Gordon (5,792,029).

9. As to claim 26, Gordon '264 discloses an exerciser as described above (see discussion of claim 1). Gordon '264 does not disclose that the means for returning includes fluid means. Gordon '029 discloses a leg exerciser having a fluid means (182) for returning pedals to a home or starting position (see Fig. 6 & Col. 8, lines 28-31). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to substitute Gordon's '264 spring means for returning with Gordon's '029 fluid

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means for returning wherein a pneumatic cylinder can be attached to the end of each foot pedal and the back end of the track to simplify the return means thereby reducing the manufacturing costs of the exerciser.

Claim 36 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gordon '264 in view of Young et al. (5,188,577).

10. As to claim 36, Gordon '264 discloses an exerciser as described above (see discussion of claim 1). Gordon '264 does not disclose a cushioning means integral with said foot pedals or said support means to cushion the user's step-down on said foot pedal. Young et al. disclose a leg exerciser having a cushion means (35) integral with a pedal or support means to cushion a user's step-down on the pedal (see Fig. 1). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine Young's pads/cushion means with Gordon's foot pedals to provide added comfort to the user during exercise.

### ***Response to Arguments***

11. Applicant's arguments with respect to claims 22, 23, 26, 27, 36 and 37 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to TAM NGUYEN whose telephone number is (571)272-4979. The examiner can normally be reached on Monday - Friday 9-5.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, LoAn Thanh can be reached on 571-272-4966. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

August 21, 2009

/Tam Nguyen/  
Examiner, Art Unit 3764

/LoAn H. Thanh/  
Supervisory Patent Examiner, Art Unit 3764